

1
2
3
4
5
6
7
8
9
10
11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION
14

15 JOSE GARIBO, Individually,
16 Plaintiff,

17 v.

18 CITY OF SAN BERNARDINO, a
19 public entity, IMRAN AHMED,
20 KEVIN RAMIREZ, PAULINA
21 ZAMORA, JOE LUCERO, DOES 1
22 through 10, Jointly and Severally,
23 Defendants.
24

Case No. 5:22-cv-00935-SSS-SHK

~~PROPOSED~~ STIPULATED
PROTECTIVE ORDER

Trial Date: 2/26/2024

Action Filed: 6/03/2021

25 Having reviewed the Parties' STIPULATED PROTECTIVE ORDER, and
26 GOOD CAUSE appearing therefore, the STIPULATION is hereby GRANTED as
27 to the following:
28

///

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

B. GOOD CAUSE STATEMENT

This action is likely to involve criminal investigation materials, police reports, medical records, financial materials, information implicating the privacy rights of third parties (i.e., bystander witnesses, emergency personnel information, etc.); and other private and confidential materials for which special protection from public disclosure and from use for any purpose other than prosecution of this action is warranted. Plaintiff also anticipates seeking personnel file materials related to the peace officer Defendants, though Defendants have not consented to any such production and intend to pursue all objections to such a production. The nature of the incident that gives rise to Plaintiffs' suit and their claims and allegations that Defendants violated Jose Garibo's civil rights based on Defendants' policies and procedures, will result in discovery production that includes: criminal investigation materials; police reports; probation materials; custody agreements; confidential

1 informant information; medical records; financial materials; peace officer personnel
 2 materials; information implicating the privacy rights of third parties and other
 3 private and confidential information otherwise generally unavailable to the public,
 4 or which may be privilege or otherwise protected from disclosure under state or
 5 federal statutes, court rules, case decisions or common law.

6 Accordingly, to expedite the flow of information, to facilitate the prompt
 7 resolution of disputes over confidentiality of discovery materials, to adequately
 8 protect information the parties are entitled to keep confidential, to ensure that the
 9 parties are permitted reasonable, necessary uses of such material in preparation for
 10 and in the conduct of trial, to address their handling at the end of the litigation, and
 11 serve the ends of justice, a protective order for such information is justified in this
 12 matter. It is the intent of the parties that information will not be designated as
 13 confidential for tactical reasons and that nothing be so designated without a good
 14 faith belief that it has been maintained in a confidential, non-public manner, and
 15 there is good cause why it should not be part of the public record of this case.

16 17 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

18 The parties further acknowledge, as set forth in Section 12.3, below, that this
 19 Stipulated Protective Order does not entitle them to file confidential information
 20 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed
 21 and the standards that will be applied when a party seeks permission from the court
 22 to file material under seal.

23 There is a strong presumption that the public has a right of access to judicial
 24 proceedings and records in civil cases. In connection with non-dispositive motions,
 25 good cause must be shown to support a filing under seal. *See Kamakana v. City and*
 26 *County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006); *Phillips v. Gen. Motors*
 27 *Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002); *Makar-Welbon v. Sony Electronics,*
 28 *Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders

1 require good cause showing), and a specific showing of good cause or compelling
 2 reasons with proper evidentiary support and legal justification, must be made with
 3 respect to Protected Material that a party seeks to file under seal. The parties' mere
 4 designation of Disclosure or Discovery Material as CONFIDENTIAL does not—
 5 without the submission of competent evidence by declaration, establishing that the
 6 material sought to be filed under seal qualifies as confidential, privileged, or
 7 otherwise protectable—constitute good cause.

8 Further, if a party requests sealing related to a dispositive motion or trial, then
 9 compelling reasons, not only good cause, for the sealing must be shown, and the
 10 relief sought shall be narrowly tailored to serve the specific interest to be protected.
 11 *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir. 2010). For
 12 each item or type of information, document, or thing sought to be filed or introduced
 13 under seal in connection with a dispositive motion or trial, the party seeking
 14 protection must articulate compelling reasons, supported by specific facts and legal
 15 justification, for the requested sealing order. Again, competent evidence supporting
 16 the application to file documents under seal must be provided by declaration.

17 Any document that is not confidential, privileged, or otherwise protectable in
 18 its entirety will not be filed under seal if the confidential portions can be redacted.
 19 If documents can be redacted, then a redacted version for public viewing, omitting
 20 only the confidential, privileged, or otherwise protectable portions of the document
 21 shall be filed. Any application that seeks to file documents under seal in their
 22 entirety should include an explanation of why redaction is not feasible.

23 24 2. DEFINITIONS

25 2.1 Action: this pending federal lawsuit

26 2.2 Challenging Party: a Party or Non-Party that challenges the
 27 designation of information or items under this Order.

28 2.3 "CONFIDENTIAL" Information or Items: information (regardless of

1 how it is generated, stored or maintained) or tangible things that qualify for
2 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
3 the Good Cause Statement.

4 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
5 their support staff).

6 2.5 Designating Party: a Party or Non-Party that designates information or
7 items that it produces in disclosures or in responses to discovery as
8 “CONFIDENTIAL.”

9 2.6 Disclosure or Discovery Material: all items or information, regardless
10 of the medium or manner in which it is generated, stored, or maintained (including,
11 among other things, testimony, transcripts, and tangible things) that are produced or
12 generated in disclosures or responses to discovery in this matter.

13 2.7 Expert: a person with specialized knowledge or experience in a matter
14 pertinent to the litigation who has been retained by a Party or its counsel to serve as
15 an expert witness or as a consultant in this Action.

16 2.8 House Counsel: attorneys who are employees of a party to this Action.
17 House Counsel does not include Outside Counsel of Record or any other outside
18 counsel.

19 2.9 Non-Party: any natural person, partnership, corporation, association or
20 other legal entity not named as a Party to this action.

21 2.10 Outside Counsel of Record: attorneys who are not employees of a
22 party to this Action but are retained to represent or advise a party to this Action and
23 have appeared in this Action on behalf of that party or are affiliated with a law firm
24 that has appeared on behalf of that party, and includes support staff.

25 2.11 Party: any party to this Action, including all of its officers, directors,
26 employees, consultants, retained experts, and Outside Counsel of Record (and their
27 support staffs).

28 2.12 Producing Party: a Party or Non-Party that produces Disclosure or

1 Discovery Material in this Action.

2 2.13 Professional Vendors: persons or entities that provide litigation
3 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
4 demonstrations, and organizing, storing, or retrieving data in any form or medium)
5 and their employees and subcontractors.

6 2.14 Protected Material: any Disclosure or Discovery Material that is
7 designated as “CONFIDENTIAL.”

8 2.15 Receiving Party: a Party that receives Disclosure or Discovery
9 Material from a Producing Party.

10 11 3. SCOPE

12 The protections conferred by this Stipulation and Order cover not only
13 Protected Material (as defined above), but also (1) any information copied or
14 extracted from Protected Material; (2) all copies, excerpts, summaries, or
15 compilations of Protected Material; and (3) any testimony, conversations, or
16 presentations by Parties or their Counsel that might reveal Protected Material.

17 Any use of Protected Material at trial shall be governed by the orders of the
18 trial judge. This Order does not govern the use of Protected Material at trial.

19 20 4. DURATION

21 Even after final disposition of this litigation, the confidentiality obligations
22 imposed by this Order will remain in effect until a Designating Party agrees
23 otherwise in writing or a court order otherwise directs. Final disposition is the later
24 of (1) dismissal of all claims and defenses in this Action, with or without prejudice,
25 or (2) final judgment after the completion and exhaustion of all appeals, rehearings,
26 remands, trials, or reviews of this Action, including the time limits for filing any
27 motions or applications for extension of time under applicable law.

28 ///

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection.

3 Each Party or Non-Party that designates information or items for protection under
 4 this Order must take care to limit any such designation to specific material that
 5 qualifies under the appropriate standards. The Designating Party must designate for
 6 protection only those parts of material, documents, items or oral or written
 7 communications that qualify so that other portions of the material, documents, items
 8 or communications for which protection is not warranted are not swept unjustifiably
 9 within the ambit of this Order.

10 Mass, indiscriminate or routinized designations are prohibited. Designations
 11 that are shown to be clearly unjustified or that have been made for an improper
 12 purpose (e.g., to unnecessarily encumber the case development process or to impose
 13 unnecessary expenses and burdens on other parties) may expose the Designating
 14 Party to sanctions.

15 If it comes to a Designating Party's attention that information or items that it
 16 designated for protection do not qualify for protection, that Designating Party must
 17 promptly notify all other Parties that it is withdrawing the inapplicable designation.

18 5.2 Manner and Timing of Designations. Except as otherwise provided in
 19 this Order (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise
 20 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
 21 under this Order must be clearly so designated before the material is disclosed or
 22 produced.

23 Designation in conformity with this Order requires:

24 (a) for information in documentary form (*e.g.*, paper or electronic
 25 documents, but excluding transcripts of depositions or other pretrial or trial
 26 proceedings), that the Producing Party affix at a minimum, the legend
 27 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
 28 contains protected material. If only a portion of the material on a page qualifies for

1 protection, the Producing Party also must clearly identify the protected portion(s)
 2 (e.g., by making appropriate markings in the margins).

3 A Party or Non-Party that makes original documents available for inspection
 4 need not designate them for protection until after the inspecting Party has indicated
 5 which documents it would like copied and produced. During the inspection and
 6 before the designation, all of the material made available for inspection shall be
 7 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
 8 documents it wants copied and produced, the Producing Party must determine which
 9 documents, or portions thereof, qualify for protection under this Order. Then,
 10 before producing the specified documents, the Producing Party must affix the
 11 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
 12 portion of the material on a page qualifies for protection, the Producing Party also
 13 must clearly identify the protected portion(s) (e.g., by making appropriate markings
 14 in the margins).

15 (b) for testimony given in depositions that the Designating Party identifies
 16 the Disclosure or Discovery Material on the record, before the close of the
 17 deposition all protected testimony.

18 (c) for information produced in some form other than documentary and
 19 for any other tangible items, that the Producing Party affix in a prominent place on
 20 the exterior of the container or containers in which the information is stored the
 21 legend “CONFIDENTIAL.” If only a portion or portions of the information
 22 warrants protection, the Producing Party, to the extent practicable, shall identify the
 23 protected portion(s).

24 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
 25 failure to designate qualified information or items does not, standing alone, waive
 26 the Designating Party’s right to secure protection under this Order for such material.
 27 Upon timely correction of a designation, the Receiving Party must make reasonable
 28 efforts to assure that the material is treated in accordance with the provisions of this

Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court's Scheduling Order.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process under Local Rule 37.1 et seq.

6.3 The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
 2 otherwise ordered by the court or permitted in writing by the Designating Party, a
 3 Receiving Party may disclose any information or item designated
 4 “CONFIDENTIAL” only to:

5 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
 6 well as employees of said Outside Counsel of Record to whom it is reasonably
 7 necessary to disclose the information for this Action;

8 (b) the officers, directors, and employees (including House Counsel) of
 9 the Receiving Party to whom disclosure is reasonably necessary for this Action;

10 (c) Experts (as defined in this Order) of the Receiving Party to whom
 11 disclosure is reasonably necessary for this Action and who have signed the
 12 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

13 (d) the court and its personnel;

14 (e) court reporters and their staff;

15 (f) professional jury or trial consultants, mock jurors, and Professional
 16 Vendors to whom disclosure is reasonably necessary for this Action and who have
 17 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18 (g) the author or recipient of a document containing the information or a
 19 custodian or other person who otherwise possessed or knew the information;

20 (h) during their depositions, witnesses, and attorneys for witnesses, in the
 21 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
 22 requests that the witness sign the form attached as Exhibit A hereto; and (2) they
 23 will not be permitted to keep any confidential information unless they sign the
 24 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
 25 agreed by the Designating Party or ordered by the court. Pages of transcribed
 26 deposition testimony or exhibits to depositions that reveal Protected Material may
 27 be separately bound by the court reporter and may not be disclosed to anyone except
 28 as permitted under this Stipulated Protective Order; and

1 (i) any mediator or settlement officer, and their supporting personnel,
2 mutually agreed upon by any of the parties engaged in settlement discussions.

3 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
4 IN OTHER LITIGATION

5 If a Party is served with a subpoena or a court order issued in other litigation
6 that compels disclosure of any information or items designated in this Action as
7 “CONFIDENTIAL,” that Party must:

8 (a) promptly notify in writing the Designating Party. Such notification
9 shall include a copy of the subpoena or court order;

10 (b) promptly notify in writing the party who caused the subpoena or order
11 to issue in the other litigation that some or all of the material covered by the
12 subpoena or order is subject to this Protective Order. Such notification shall include
13 a copy of this Stipulated Protective Order; and

14 (c) cooperate with respect to all reasonable procedures sought to be
15 pursued by the Designating Party whose Protected Material may be affected.

16 If the Designating Party timely seeks a protective order, the Party served with
17 the subpoena or court order shall not produce any information designated in this
18 action as “CONFIDENTIAL” before a determination by the court from which the
19 subpoena or order issued, unless the Party has obtained the Designating Party’s
20 permission. The Designating Party shall bear the burden and expense of seeking
21 protection in that court of its confidential material and nothing in these provisions
22 should be construed as authorizing or encouraging a Receiving Party in this Action
23 to disobey a lawful directive from another court.

24
25 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
26 PRODUCED IN THIS LITIGATION

27 (a) The terms of this Order are applicable to information produced by a
28 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information

1 produced by Non-Parties in connection with this litigation is protected by the
2 remedies and relief provided by this Order. Nothing in these provisions should be
3 construed as prohibiting a Non-Party from seeking additional protections.

4 (b) In the event that a Party is required, by a valid discovery request, to
5 produce a Non-Party's confidential information in its possession, and the Party is
6 subject to an agreement with the Non-Party not to produce the Non-Party's
7 confidential information, then the Party shall:

8 (1) promptly notify in writing the Requesting Party and the Non-Party
9 that some or all of the information requested is subject to a confidentiality
10 agreement with a Non-Party;

11 (2) promptly provide the Non-Party with a copy of the Stipulated
12 Protective Order in this Action, the relevant discovery request(s), and a reasonably
13 specific description of the information requested; and

14 (3) make the information requested available for inspection by the
15 Non-Party, if requested.

16 (c) If the Non-Party fails to seek a protective order from this court within
17 14 days of receiving the notice and accompanying information, the Receiving Party
18 may produce the Non-Party's confidential information responsive to the discovery
19 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
20 not produce any information in its possession or control that is subject to the
21 confidentiality agreement with the Non-Party before a determination by the court.
22 Absent a court order to the contrary, the Non-Party shall bear the burden and
23 expense of seeking protection in this court of its Protected Material.

24
25 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

26 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
27 Protected Material to any person or in any circumstance not authorized under this
28 Stipulated Protective Order, the Receiving Party must immediately (a) notify in

1 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
 2 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
 3 persons to whom unauthorized disclosures were made of all the terms of this Order,
 4 and (d) request such person or persons to execute the “Acknowledgment and
 5 Agreement to Be Bound” that is attached hereto as Exhibit A.

6 7 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE 8 PROTECTED MATERIAL

9 When a Producing Party gives notice to Receiving Parties that certain
 10 inadvertently produced material is subject to a claim of privilege or other protection,
 11 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
 12 Procedure 26(b)(5)(B). This provision is not intended to modify whatever
 13 procedure may be established in an e-discovery order that provides for production
 14 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and
 15 (e), insofar as the parties reach an agreement on the effect of disclosure of a
 16 communication or information covered by the attorney-client privilege or work
 17 product protection, the parties may incorporate their agreement in the stipulated
 18 protective order submitted to the court.

19 20 12. MISCELLANEOUS

21 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
 22 person to seek its modification by the Court in the future.

23 12.2 Right to Assert Other Objections. By stipulating to the entry of this
 24 Protective Order, no Party waives any right it otherwise would have to object to
 25 disclosing or producing any information or item on any ground not addressed in this
 26 Stipulated Protective Order. Similarly, no Party waives any right to object on any
 27 ground to use in evidence of any of the material covered by this Protective Order.

28 12.3 Filing Protected Material. A Party that seeks to file under seal any

1 Protected Material must comply with Local Civil Rule 79-5. Protected Material
2 may only be filed under seal pursuant to a court order authorizing the sealing of the
3 specific Protected Material at issue. If a Party's request to file Protected Material
4 under seal is denied by the court, then the Receiving Party may file the information
5 in the public record unless otherwise instructed by the court.

6
7 **13. FINAL DISPOSITION**

8 After the final disposition of this Action, as defined in paragraph 4, within 60
9 days of a written request by the Designating Party, each Receiving Party must return
10 all Protected Material to the Producing Party or destroy such material. As used in
11 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
12 summaries, and any other format reproducing or capturing any of the Protected
13 Material. Whether the Protected Material is returned or destroyed, the Receiving
14 Party must submit a written certification to the Producing Party (and, if not the same
15 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
16 (by category, where appropriate) all the Protected Material that was returned or
17 destroyed and (2) affirms that the Receiving Party has not retained any copies,
18 abstracts, compilations, summaries or any other format reproducing or capturing any
19 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
20 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
21 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
22 reports, attorney work product, and consultant and expert work product, even if such
23 materials contain Protected Material. Any such archival copies that contain or
24 constitute Protected Material remain subject to this Protective Order as set forth in
25 Section 4 (DURATION).

26 ///

27 ///

28 ///

14. VIOLATION

Any violation of this Order may be punished by appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: January 23, 2023

A handwritten signature in black ink, appearing to read 'Shashi H. Kewalramani', written over a horizontal line.

Hon. Shashi H. Kewalramani
United States Magistrate Judge

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury
 that I have read in its entirety and understand the Stipulated Protective Order that
 was issued by the United States District Court for the Central District of California
 on [date] in the case of _____ **[insert formal name of the case and the
 number and initials assigned to it by the court]**. I agree to comply with and to be
 bound by all the terms of this Stipulated Protective Order and I understand and
 acknowledge that failure to so comply could expose me to sanctions and punishment
 in the nature of contempt. I solemnly promise that I will not disclose in any manner
 any information or item that is subject to this Stipulated Protective Order to any
 person or entity except in strict compliance with the provisions of this Order.
 I further agree to submit to the jurisdiction of the United States District Court for the
 Central District of California for enforcing the terms of this Stipulated Protective
 Order, even if such enforcement proceedings occur after termination of this action.
 I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and
 telephone number] as my California agent for service of process in connection with
 this action or any proceedings related to enforcement of this Stipulated Protective
 Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____